

**THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION**

**NANCY HIGGS**

**VS.**

**BRK BRANDS, INC.**

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**CIVIL ACTION NO. \_\_\_\_\_**

**PLAINTIFF'S ORIGINAL COMPLAINT**

Nancy Higgs, Plaintiff, files this her Original Complaint against BRK Brands, Inc., Defendant, and for cause of action would respectfully show the Court as follows:

**PARTIES AND SERVICE**

1. Plaintiff, Nancy Higgs, is an individual who resides in the Southern District of Texas.
2. Defendant, BRK Brands, Inc., is a Delaware corporation with its principal place of business in Aurora, Illinois. Defendant is duly licensed to do business in the State of Texas, and doing business in the State of Texas for the purpose of accumulating monetary profit. This Defendant may be served with process herein by serving its registered agent for service, Corporation Service Company D/B/A CSC-Lawyers Incorporating Service Company, 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701-3136.

**JURISDICTION AND VENUE**

3. This Court has jurisdiction over the lawsuit under 28 U.S.C. §1332(a)(1) because the Plaintiff and the Defendant are citizens of different states, and the amount in controversy exceeds \$75,000.00, excluding interest and costs. Therefore, this Court has subject matter jurisdiction to hear this civil action because of the amount in controversy and complete diversity of citizenship, as demonstrated above. Plaintiff specifically reserves the right to amend this pleading for a certain amount in the

future.

4. Venue is proper in this District because a substantial part of the events or omissions giving rise to Plaintiff's claim occurred in the Southern District of Texas.

### **FACTS**

5. It has become necessary to bring this suit by reason of serious and permanent injuries sustained by Plaintiff, Nancy Higgs, on or about August 12, 2017. Plaintiff's injuries and damages occurred when a First Alert Tundra fire extinguisher can exploded and caused serious injuries to Plaintiff. Defendant manufactured and sold the First Alert Tundra can. Plaintiff used the product in a normal and customary manner. While in the home of Nancy Higgs, the spray can was stored in a kitchen cabinet under her sink. As she reached for and touched the product, it exploded causing severe injuries to her face and body in general.

### **STRICT LIABILITY**

6. Defendant, BRK Brands, Inc., is liable under the theory of strict liability as set forth in Section 402A and 402B of the Restatement (Second) of Torts. Defendant at all material times engaged in the business of designing, manufacturing, selling, marketing, and supplying the product made the basis of this lawsuit.

7. The defective condition of the product rendered it unreasonably dangerous at the time it was designed, manufactured, sold, supplied, and marketed by the Defendant. The product was unreasonably dangerous because it was designed and manufactured such that the contents were over-pressured in such a way to cause an explosion of the product causing severe injuries.

8. Defendant possessed actual knowledge of the product's defect when it sold or supplied the product to Plaintiff. The defective product caused Plaintiff's injuries and damages.

9. The defective condition of the product was a producing cause of the occurrence in question, Plaintiff's injuries and damages.

### **NEGLIGENCE**

10. Defendant owed and breached a duty to design, manufacture, sell, supply, and market the product. Defendant also owed and breached a duty to warn Plaintiff about hazards and risks associated with the product. Defendant negligently undertook to represent to Plaintiff that the product was safe for its intended use. Defendant's negligence caused the incident, as well as Plaintiff's injuries and damages.

11. The product was designed, manufactured, sold, supplied, installed, and marketed in a negligent and defective condition. As a result, Defendant's negligence caused the incident in question, as well as Plaintiff's injuries and damages.

### **PLAINTIFF'S INJURIES AND DAMAGES**

12. Plaintiff suffered severe bodily injuries as a result of the incident made the basis of this lawsuit. Plaintiff, therefore, seeks the recovery of the following damages:

- a. Past and future physical pain;
- b. Past and future mental anguish;
- c. Past and future physical impairment;
- d. Past and future physical disfigurement;
- e. Past loss of wages and household services;
- f. Future loss of earning capacity and household services; and
- g. Past and future medical expenses.

**RECOVERY OF INTEREST**

13. Plaintiff would additionally say and show that she is entitled to recovery of pre-judgment and post-judgment interest in accordance with law and equity as part of her damages herein and Plaintiff here and now sues specifically for recovery of pre-judgment and post-judgment interest as provided by law.

**PRAYER**

WHEREFORE, Plaintiff, Nancy Higgs, prays that Defendant, BRK Brands, Inc., be cited to appear and answer this lawsuit, that judgment be entered against Defendant, that Plaintiff recover her damages in accordance with the evidence, that Plaintiff recover her costs of court, that Plaintiff recover interest to which she is entitled under the law, and for all other just and equitable relief.

Respectfully Submitted,

**STEVENSON & MURRAY**

/s/ *John W. Stevenson, Jr.*

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